

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

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|---------------------------|---|--------------------------------|
| United States of America, |) | |
| |) | |
| Plaintiff, |) | ORDER DENYING MOTION TO |
| |) | MODIFY DETENTION ORDER |
| vs. |) | |
| |) | |
| Frank Anthony Villa, |) | Case No. 1:15-cr-044 |
| |) | |
| Defendant. |) | |

Defendant is presently in custody awaiting sentencing. On November 13, 2015, he filed a “Motion to Modify Detention Order.” He requests to be released from custody so that he can participate in a substance abuse treatment program at Teen Challenge in Mandan, North Dakota.

On October 5, 2015, defendant entered a guilty plea to the offense of conspiracy to possess with intent to distribute and distribute a mixture and substance containing detectable amounts of heroin in violation of 21 U.S.C. §§ 841(a)(1) and 846. (Docket Nos. 59-60, 62). The Government has certified that defendant has two prior qualifying convictions. (Docket No. 58). Given his prior convictions and the quantity of heroin involved in the instant case (between 1 and 3 kilograms), defendant is facing a mandatory life sentence. 21 U.S.C. § 841(b)(1)(A)(viii).

Title 18 of the United State Code, Section 3143(a)(2) provides that a defendant who has been found guilty of an offense under the Controlled Substances Act that carries a maximum term of imprisonment of ten years or more and is awaiting imposition of sentence must be detained unless:

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.”

18 U.S.C. §§ 3143(a)(2)(A) and (B).

Defendant’s desire to obtain treatment is admirable. Nevertheless, there is nothing in the record to suggest that defendant is eligible for release under § 3143. Defendant’s “Motion to Modify Detention Order” (Docket No. 73) is therefore **DENIED**.

IT IS SO ORDERED.

Dated this 18th day of November, 2015.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court